Magistrate Judge Mary Alice Theiler

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. THERON HECKENLIVELY, Defendant.	NO. MJ16-484MAT COMPLAINT 18 U.S.C. § 2252(a)(2)

BEFORE, the Honorable Mary Alice Theiler, United States Magistrate Judge, U. S. Courthouse, Seattle, Washington.

COUNT 1
(Receipt of Child Pornography)

Beginning on a date unknown but within the last year and continuing until the present, at Oak Harbor, within the Western District of Washington, and elsewhere, THREON HECKENLIVELY did knowingly receive, and attempt to receive, visual depictions the production of which involved the use of minors engaging in sexually explicit conduct, and the visual depictions were of such conduct, using any means and facility of interstate and foreign commerce and which images had been mailed and shipped and transported in and affecting interstate and foreign commerce by any means, including by computer.

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All in violation of Title 18, United States Code, Section 2252(a)(2), (b)(1).

And the complainant states that this Complaint is based on the following information:

I, Special Agent Shaun Smith, being duly sworn under oath, depose and say:

INTRODUCTION

1. I am a Special Agent with the U.S. Department of Homeland Security, Homeland Security Investigations (HSI), assigned to the Assistant Special Agent in Charge (ASAC) Blaine, Washington, field office. I have been employed as an HSI Special Agent since 2002. Prior to this assignment, I worked as a United States Customs Inspector from 1996 to 2002. In my capacity as a Special Agent, I am responsible for conducting investigations into the numerous federal laws enforced by HSI. Since 2014, I have investigated criminal violations relating to child exploitation and child pornography, including violations pertaining to the unlawful production, importation, distribution, receipt, attempted receipt, and possession of child pornography and material involving the sexual exploitation of minors in violation of 18 U.S.C. §§ 2251, 2252(a), and 2252A(a). I am a graduate of the Federal Law Enforcement Training Center (FLETC), HSI Special Agent Training Program. My training included courses in law enforcement techniques, federal criminal statutes, conducting criminal investigations, and the execution of search warrants. I have had the opportunity to observe and review hundreds of examples of child pornography (as defined in 18 U.S.C. § 2256(8)). I have participated in the execution of many search warrants which involved child exploitation and/or child pornography offenses and the search and seizure of computers and other digital devices. I work with other federal, state, and local law enforcement personnel in the investigation and prosecution of crimes involving the sexual exploitation of children. I received a Bachelor of Science degree in Criminal Justice from California State University, Long Beach.

2. The facts set forth in this Complaint are based on my own personal knowledge; knowledge obtained from other individuals during my participation in this

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investigation, including other law enforcement officers; review of documents and records related to this investigation; communications with others who have personal knowledge of the events and circumstances described herein; and information gained through my training and experience. I have not set forth each and every fact known to me as a result of this investigation but only those facts I believe necessary to establish probable cause to conclude that THERON HECKENLIVELY committed the offense charged in this Complaint.

3. As further detailed below, based on my investigation and the investigation of other law enforcement officers, I submit there is probable cause to believe that THERON HECKENLIVELY knowingly received child pornography.

SUMMARY OF PROBABLE CAUSE

4. Twitter is an Electronic Service Provider (ESP) that offers a freely-available microblogging platform to members of the public. Users who sign up for accounts can access the service via the Internet using a personal computer or the Twitter application available for tablets and smartphones. Twitter allows users to create short posts called "Tweets." Tweets are limited to a specified number of characters and can include the user's personal thoughts, tweets made by other users, public comments, photographs, videos, and links to external Internet sites.

5. Twitter users can "follow" other users and be "followed." They can also create lists of users based on selected criteria. Tweets can be publicly available or be disseminated more narrowly (*e.g.*, to a user's followers) depending in the privacy settings selected by the accountholder. Twitter's direct messaging feature permits users to exchange private messages with one another.

6. On June 27, 2016, the National Center for Missing and Exploited Children (NCMEC) provided CyberTip report #12752942 to HSI Special Agent Toby Ledgerwood. NCMEC is a private non-profit organization operating under a Congressional mandate to act as the nation's law enforcement clearing house for information concerning online child sexual exploitation. In partial fulfillment of that

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mandate, NCMEC operates a CyberTip line, a resource for reporting online crimes against children. ESPs report to NCMEC, via the CyberTip line, whenever they discover that a subscriber has violated the terms of service and/or their services have been used to transmit child pornography over the Internet.

7. According to the CyberTip, Twitter user tdiggiedog25 (USER ID 2920083691) (the SUBJECT USER) uploaded an image of child pornography, "ATbjR1ic.jpg," which Twitter reviewed before submitting the CyberTip to NCMEC.

8. Along with the CyberTip report, Twitter included "tdiggiedog25-2920083691-2016-06-27-291493.zip" (the SUBJECT FILE), which contained the image described above, additional content from the SUBJECT USER's account, and IP connection logs for that account. I examined the SUBJECT FILE and located "ATbjR1ic.jpg," which I reviewed and describe as follows:

> This image depicts two prepubescent females who appear to be between the ages of eight and eleven. One child is kneeling facing the camera while the other child is on her knees and elbows facing away from the camera. The child facing the camera is spreading the vagina and buttocks of the child facing away from the camera. I estimate these children are between eight and eleven based on their size, lack of breast development, and lack of pubic hair.

9. On October 20, 2016, I obtained a federal search warrant from United States Magistrate Judge Paula L. McCandlis to examine other content of the SUBJECT USER's Twitter account that was included with the SUBJECT FILE. The SUBJECT FILE showed that the image described above was sent by the SUBJECT USER via Twitter's direct messaging service.

10. The IP connection logs show that at the time that message was sent, the SUBJECT USER was accessing Twitter using IP ADDRESS 67.183.75.57 (the SUBJECT IP ADDRESS). The CyberTip also provided additional IP addresses used to connect to that Twitter account, including: 24.17.158.246. Both belong to ISP Comcast. On August 3, 2016, I served a Department of Homeland Security (DHS) Summons on Comcast requesting subscriber information for these IP addresses during the periods they were used to connect to the SUBJECT USER's account. There were additional IP

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ADDRESSES listed within the connection logs not discussed here. That is not surprising given that Twitter is a mobile platform that is commonly accessed via smartphone/tablet. Accordingly, the same account may be accessed from several different locations/networks associated with several different subscribers over a relatively brief period of time.

11. According to Comcast on June 26, 2016, the SUBJECT IP ADDRESS was assigned to a service and billing address of 34938 SR 20 TRLR 35, Oak Harbor, Washington 98277 (the SUBJECT PREMISES). IP ADDRESS 24.17.158.246 was assigned to C.A. with service address in Bellingham and a billing address of the SUBJECT PREMISES.

12. Included within the SUBJECT FILE was a folder entitled "account images," which contains images uploaded by the SUBJECT USER through Twitter's image hosting service. The first image in that folder shows a male who appears to be in his late teens. He is standing in a side profile with the left side of his face toward the camera. In his right hand is a fedora that he is holding slightly off the top of his head. I also reviewed the "tweets.txt" file contained in the SUBJECT FILE. This file contains the text of "tweets" posted by the SUBJEC USER. I found a "tweet" dated December 6, 2015, containing the following text: "Hi @ MarziaPie my name is Theron I like your videos. Mostly the ones you and pewds have a contest and he cheats. XD oh and hhhhows it going?"

13. I reviewed the public Facebook profile for Facebook user C.A., whose location was listed as Bellingham, WA. A search of "Theron" under friends of C.A. resulted in a Facebook account with the name Theron HECKENLIVELY. The publicly available profile picture on Theron HECKENLIVELY's Facebook account is identical to the picture of the teenage male described above.

14. A check of the NCIC database revealed that HECKENLIVELY is a registered sex offender and that his registered address is the SUBJECT PREMISES. He has been registered at that address since September 2014. Court records from Island

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County show that HECKENLIVELY has a juvenile conviction for Child Molestation in the First Degree.

15. On November 14, 2016, I obtained a search warrant for the SUBJECT PREMISES and the person of THERON HECKENLIVELY from Magistrate Judge Paula L. McCandlis and, assisted by other law enforcement agents, executed that warrant on November 15, 2016.

16. Upon entering the residence, I made contact with HECKENLIVELY and advised him of his constitutional rights. He agreed to waive his rights and be interviewed.

17. Among other things, HECKENLIVELY acknowledged that he was the owner of the Twitter handle referenced above. He also stated that he regularly downloaded and viewed child pornography over the Internet. He stated that he regularly obtained child pornography via links to Dropbox accounts that he located on the Internet and then stored images and videos of child pornography in his personal Dropbox account.

18. With HECKENLIVELY's consent, agents accessed his Dropbox account and located several images and videos of suspected child pornography, including the two videos described below. Each was several minutes long, and I have not watched them in their entirety but was able to confirm that they depict minors engaged in sexually explicit conduct.

> Video File #1: This color video depicts a female child approximately 10-12 years old (the "child victim"). In the beginning of the video, the child victim is nude from the waist down. The child victim is then showing using her fingers to spread apart her vagina and masturbate. The child victim had no visible pubic hair and was small in stature.

> Video File #2: This color video depicts a prepubescent male approximately 8 years old ("child victim 1") and a prepubescent female approximately 10-12 years old ("child victim 2"). Both are naked from the waist down. Child victim 1 is shown attempting to perform sexual intercourse with child victim 2. Child victim 1 had no visible pubic hair and was very small in stature.

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CONCLUSION

19. Based on the above facts, I respectfully submit that there is probable cause to believe that THERON HECKENLIVELY did knowingly and unlawfully receive child pornography in violation of Title 18, United States Code, Section 2252(a)(2), (b)(1).

SHAUN SMITH
Special Agent, HSI

Based on the Complaint and Affidavit sworn to before me, and subscribed in my presence, the Court hereby finds that there is probable cause to believe the Defendant committed the offense set forth in the Complaint.

Dated this 15th day of November, 2016.

MARY ALICE THEILER
United States Magistrate Judge

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